

REMARKS

Reconsideration and allowance of the present application are respectfully requested. Claims 1-5, 19-26, 28-34, 40-46, 48, 50-56 and 58-64 remain pending. Claims 16-17 and 35 were previously cancelled. New claims 65-67 have been added. Claims 38-39 and 49 have been canceled. Claims 6-15, 18, 27, 36-37, 47 and 57 have been withdrawn from consideration.

In a restriction requirement dated August 11, 2004, the Examiner required restriction to the following groups:

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| Group I: | Claims 1-5, drawn to a promoter for the expression of recombinant proteins in filamentous fungi; |
| Group II: | Claims 6-10, drawn to a DNA sequence encoding glutamate dehydrogenase protein; |
| Group III: | Claims 11-15, drawn to a glutamate dehydrogenase protein; |
| Group IV: | Claims 18-28, 34-38, 49-59, 61-62 and 64, drawn to a DNA construct and method of using said construct for expressing a recombinant protein in filamentous fungi; |
| Group V: | Claims 29-32, 39-48, 60 and 63, drawn to a filamentous fungus culture; and |
| Group VI: | Claim 35, drawn to a method of using DNA as a probe. |

The foregoing restriction is respectfully traversed.

It is noted that no unity of invention objection was raised in the International PCT application. For this reason, the restriction requirement is considered to be in error.

In addition, Examiner asserts on page 3 of the Office Action that the claims set forth in Groups I-VI "*fail to define a contribution which each of the claimed inventions as a whole make over the prior art*" (see the last sentence in the penultimate paragraph on page 3). In this portion of the Office Action, the Examiner has referenced two documents: WO 98/9459 and Gibco Catalog 1993-1994, both of which the Examiner asserts satisfy the features of claim 1. These assertions are respectfully traversed. Neither of these documents teach nor

suggest the use of a promoter for the expression of recombinant proteins in a filamentous fungi that comprises a nucleotide sequence, or a complementary strand thereof, having nucleotides 1-740 SEQ ID NO: 1, as recited in claim 1. Such a promoter is used in the DNA constructs, filamentous fungus cultures, and processes for producing each of these, recited in the remaining pending claims of the application.

As such, Applicants' claim 1 does recite a novel, non-obvious contribution which is common to all of the pending claims which refer to claim 1. Applicants' claim 1 is therefore allowable. Remaining claims of Groups IV and V which refer to claim 1, should be considered along with claim 1, and allowed.

In light of the foregoing comments, the restriction of Applicants' pending claims into Groups I-VI is respectfully traversed. However, because an election of a particular Group must be made, Applicants' hereby elect Group I, claims 1-5 as amended, with traverse. In addition, claims 19-26, 28-34, 40-46, 48, 50-56 and 58-67 depend from the independent claims of Group I, and should be considered with Group I.

In addressing claims which should properly fall within Group I, it is noted that the Examiner's restriction in Group VI refers to claim 35. However, claim 35 had been previously cancelled. Accordingly, clarification is requested as to which, if any claims, were intended to fall in the Group VI. In addition, it is noted that claim 33 was not identified as corresponding to any of the Groups I-VI. Because claim 33 refers to claim 1, it is respectfully submitted that claim 33 should be considered with Group I.

Accordingly, reconsideration and withdrawal of the aforementioned restriction requirement and species election are respectfully requested. The provisional election is hereby made without prejudice to Applicants' right to file a divisional application or applications should the restriction requirement become final.

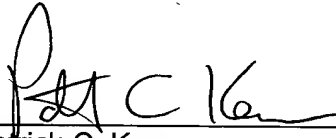
Should the Examiner have questions regarding any of the above, or wish to discuss any of the foregoing matters in greater detail, it is requested that the undersigned be contacted at the number shown below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

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By: _____


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